

**PT 05-16**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

**AMERICAN LEGION LOUIS E.  
DAVIS POST 56, INC.**

**Applicant**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**A.H. Docket #**

**04-PT-0008**

**P. I. # s**

**21-18-401-002 (5)**

**21-18-401-013 (5)**

**Docket #**

**03-57-64**

**Barbara S. Rowe**

**Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Douglas R. Smith, Saint Law Group, P.C. for American Legion Louis E. Davis Post 56, Inc.; Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

**Synopsis:**

The hearing in this matter was held to determine whether McLean County Parcel Index Nos. 21-18-401-002 (5) and 21-18-401-013 (5) qualified for exemption during the 2003 assessment year.

Royden R. Jones, 2004 Commander of American Legion Louis E. Davis Post 56, Inc. (hereinafter referred to as the "Applicant" or "Post 56" ) and Richard A. Gerardo, Vice-Commander, were present and testified on behalf of Applicant.

The issues in this matter include, first, whether Applicant was the owner of the parcels during the 2003 assessment year; secondly, whether applicant is a veteran's organization; and lastly, whether the parcels were used by Applicant for patriotic, civic and charitable purposes

during the 2003 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that McLean County Parcel Index Nos. 21-18-401-002 (5) and 21-18-401-013 (5) did not qualify for a property tax exemption for the 2003 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the application for exemption of the subject parcels from the McLean County Board of Review. The board recommended granting a partial year exemption from October 30, 2003 through December 31, 2003. The Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 1)

3. The applicant acquired the subject parcels by a Warranty Deed dated October 30, 2003. Located on the 1.38-acre parcels is a 1575 square foot one story building. The building contains an open area, lounge, kitchen, conference room, two full baths, a small meeting room and an office. It has an unfinished basement. A deck is attached to the building and a three bay garage is at the back of the properties. In 2003 the garage was used for storage. (Dept. Ex. No. 1; Tr. pp. 17-19)

4. The preamble to Applicant's "COMBINED CONSTITUTION AND BY-LAWS" states that its purpose is:

For God and Country, we associate ourselves together for the following purposes. To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred per cent

Americanism, to preserve the memories and incidents of our associations in the great wars; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses. To make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom, and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness. (Dept. Ex. No. 1)

5. The subject property is used for Post 56 meetings and planning sessions for Post 56's community programs. Those programs include food baskets for the needy, financial assistance for boys to attend Boy's State, financial assistance for boys to participate in Applicant's baseball program, a free smoking cessation clinic, free honor guard services for veterans, organizing parades for Veteran's Day and Memorial Day, distributing flags throughout the community at no cost to the beneficiaries on some patriotic holidays, distributing flags for organizations such as schools and airports, at a cost that ranges from what the flag costs Post 56 to free depending upon the need of the organization, and organizing a blood drive to help support the Red Cross. These specific programs are not carried out on the subject property. (Dept. Ex. No. 1; Tr. pp. 13-15, 22, 24 )

6. The dues are \$25.00 per year to join Post 56. Persons with "federal service in the military that fall within certain windows that congress has mandated are eligible for membership" in Applicant. Post 56 has no written policy for waiver of the membership fee if a person cannot afford it<sup>1</sup>. (Tr. pp. 11, 21-22)

7. Applicant began to hold monthly membership meetings in the building on the subject property in January 2004. Executive committee meetings are also held there. Applicant uses the building for planning sessions for fund raising. Some of the funds will be used to pay

---

<sup>1</sup> The testimony was that there is currently a program for potential members returning from Iraq and Afghanistan to be granted a year's free membership in the Post. It is unknown if that program took place in 2003. (Tr. p. 26)

off the building and some will be used for the community programs. There is no bar or restaurant on the premises. (Tr. pp. 15-16, 20, 28)

8. From October 2003 until January 2004, Applicant made the building handicapped accessible, expanded the parking area and fixed wiring. It also had the zoning of the property changed from agricultural to commercial. (Dept. Ex. No. 1; Tr. pp. 20-23)

### **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the

exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

In the case of North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), the Supreme Court of Illinois held that the predecessor statute to 35 ILCS 200/15-145<sup>3</sup> was constitutional and that the provision granting an exemption to a veterans' organization required that the organization's utilization of the property encompass all three of the required uses: civic, patriotic, and charitable. In fact, the court stated that "[T]his is not a broader exemption than is permitted by the constitution, rather it is more restrictive, therefore, section 19.18 pertaining to veterans' organizations is not unconstitutional." *Id.* at 234. The Court found that the Post was a veterans' organization; however, the Court went on to hold that the applicant's usage of the property for its meetings, wedding receptions, meetings of various other groups, and the bar maintained on the premises primarily for members, necessitated a finding by the Court that the primary use of the property was not exempt.

Regarding whether Post 56 is a veterans' organization, in North Shore Post No. 21, *supra*, the Court stated that:

There is no argument that plaintiff is not a veterans' organization. In this case as in Rogers Park, the plaintiff was organized primarily 'to carry out the purposes and objectives of the American Legion, to foster love of country, respect for out civil institutions and to benefit and afford comradeship to its members.' (8 Ill.2d 286, 291, 134 N.E.2d 292, 295). Additional purposes are set forth in its charter and may be summarized as follows: to aid and assist financially and to otherwise care for disabled veterans and their families; to engage in charitable works and enterprises; and to own and use real estate for charitable purposes. *Id.* at 235.

---

3. At the time North Shore Post No. 21 was decided, the exemption for veteran's organizations was found at "section 19.18 of the Revenue Act of 1939, as amended, (Ill.Rev. Stat. 1963, chap. 120, par. 500.180)." *Id.* at 232.

As Post 56 is also an American Legion Post with the same organizational documents as North Shore Post 21 and Rogers Park Post No. 108<sup>2</sup>, I find that Post 56 is a veterans' organization. However, Post 56 must also establish that it uses the subject property for charitable, civic and patriotic purposes.

Post 56's Memorandum asserts that "[U]nfortunately, charitable purpose is not defined in the act in question." (Memorandum in Support of Applicant, American Legion, Louis E. Davis Post #56, Inc. p. 2) While the Property Tax Code does not define the term charitable, it does contain an exemption for charitable organizations at 35 **ILCS** 200/15-65. The Illinois courts have said that "charity" does not necessarily mean almsgiving or the relief of poverty and distress, but, in a broader sense, is a gift to be applied, consistently with existing laws for the benefit of an indefinite number of persons, by bringing their hearts under the influence of education or religion for their general welfare, by relieving their bodies from disease, suffering and constraint, by assisting them to establish themselves for life embracing the improvement and promotion of the happiness of man, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens on government. Coyne Elec. School v. Paschen, 12 Ill.2d 387 (1958), People ex rel. Nordlund v. Association of Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App.3d 851 (1<sup>st</sup> Dist. 1977).

The Illinois Supreme Court has interpreted this definition by observing that all institutions of public charity share the following distinctive characteristics:

- 1) Whether the benefits derived from the property are for an indefinite number of persons;

---

<sup>2</sup> The decision in Rogers Park Post No. 108, The American Legion v. Brenza, 8 Ill.2d 286 (1956) contains the preamble to the constitution and by-laws of the organization. *Id.* at 288-89. It is virtually identical to Applicant's.

2. Whether the property benefits the public in such a way as to persuade them to an educational or religious conviction, for their general welfare;
3. Whether the property benefits the public in such a way that it reduces the burdens of government;
4. Whether the organization has no capital, capital stock, or shareholders and earns no profits or dividends;
5. Whether the organization's funds are derived mainly from public and private charity;
6. Whether such funds are held in trust for the objects and purposes expressed in the organization's charter;
7. Whether the organization dispenses charity to all that need and apply for it;
8. Whether the organization provides gain or profit in a private sense to any person connected with it;
9. Whether the organization places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
10. Whether the exclusively (primary) use of its property is for charitable purposes. Methodist Old Peoples Home v. Korzen 39 Ill.2d 149, 156-57 (1968).

These factors are not requirements, but are guidelines that are considered in assessing an organization's charitable status. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 468 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

Applicant acquired the subject property in October 2003. During the rest of the year it made the building handicapped accessible, expanded the parking lot and fixed wiring. During the period that an applicant sufficiently adapts property for an exempt use, Illinois Courts have held that the property may be exempt from taxation, where it has been adequately demonstrated that the property is in the actual process of development and adaptation for that exempt use.

Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11(1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st. Dist. 1977); and Weslin Properties Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). However, starting in 2004, Post 56 began to use the property for its membership and executive committee meetings. The court in North Shore Post 21 stated that conducting meetings, both business and social were not *per se* patriotic and charitable uses of property. North Shore Post 21, *supra* at 235-6. Therefore, Applicant ultimately did not use the property for an exempt purpose. I therefore find that the Applicant has not established that the activities it conducts satisfy the three-prong test of charitable, civic, and patriotic usage that the statute requires.

Whereas, Post 56 has failed its burden of proof in showing it qualifies for property tax exemption, it is therefore recommended that McLean County Parcel Index Nos. 21-18-401-002 (5) and 21-18-401-013 (5) remain on the tax rolls for the 2003 tax year and be assessed to the Applicant, the owner thereof, for the period of October 30, 2003 through December 31, 2003.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
Date: March 3, 2005